

This letter responds to questions regarding the certifications necessary to document sales for resale associated with a drop shipment situation. See 86 Ill. Adm. Code 130.1405. (This is a GIL).

June 30, 2000

Dear Xxxxx:

This letter is in response to your request received by our office on May 15, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Hello! I am asking for clarification on your sales tax statutes with regard to the following scenario:

Company A is a registered reseller in IL. Company B is a reseller who is not registered in IL because it does not have nexus and is not required to be registered. Company C is an end user in IL.

Company B buys product from Company A to resell to company C. Company B directs Company A to ship directly (i.e. drop ship) to Company C.

Question: What does Company A need to get from Company B to document that the transaction between the two is a resale transaction exempt from IL sales tax? (with the understanding that Company C is required to report and pay the use tax on the transaction between Company B and Company C, which is the true sale at retail)

When calling the help line, there appears to be confusion between what I was told and what I understand from previous research. Moreover, your own web site seems to support my research. Normally, Company B would have to supply Company A with a valid IL resale exemption certificate or a similar type of certification. However, since Company B has no nexus with IL and therefore does not have an IL resale number, it is my understanding that Company B can provide "other evidence" as follows:

- a statement from Company B that it does not have nexus, that it does not choose to register with IL, that it is a registered reseller in its domicile state along with certification of that registration, and that its sales into IL are for resale only

This is supported, or at least referred to, by the FAQ section of your web site under the question "How are sales for resale transactions documented?" The last paragraph of the answer under that question refers to the "other evidence." In addition, state statute 35 ILCS 120/2c further supports and explains this. Moreover, I have a copy of a transcript that Melanie Jarvis, Associate Counsel of the Legal Service Office of the Illinois Department of Revenue, authored in response to this very question, which explains in detail this "other evidence" provision and refers to a General Information Letter about this subject matter.

Can you please clarify/confirm this? It seems to me that the end user (Company C) is responsible for the use tax since Company B cannot bill the IL sales tax. Moreover, charging tax on Company A (or having Company A charge tax on Company B) means charging tax on a resale transaction (from A to B) instead of the retail transaction (from B to C), which goes against the very definition of a sales tax. This would also amount to double taxation since Company C does not know what Company A is doing and would pay the use tax as well.

I very much look forward to your response. If you need to speak with me directly, please call me at #####. thank you very much for your time!

The information you reference from the Department's website, the Department's letter rulings, and Section 2c of the Retailers' Occupation Tax Act is correct. We do not know what information you were given over the "help line."

In the standard drop shipment scenario set out in your letter, Company A must either charge tax or document an exemption when it makes a delivery in Illinois. In order to document the fact that its sale to Company B is a sale for resale, Company A is obligated by Illinois to obtain a valid Certificate of Resale from Company A. See the enclosed copy of 86 Ill. Adm. Code 130.1405. If Company B has no contact with Illinois which would require it to be registered as an out-of-State Use Tax collector for Illinois, then Company B could obtain a resale number which would provide it the wherewithal to supply a required number to Company A in conjunction with a Certificate of Resale.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items which will be resold. So long as Company B does not act as an Illinois retailer and, so long as it does not fall under the definition of a "retailer maintaining a place of business in this State", its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and it cannot be required to act as a Use Tax collector. So long as this is true, Company B qualifies for a resale number which does not require the filing of tax returns with the Illinois Department of Revenue.

Please note that the fact that Company B may not be required to act as a Use Tax collector for Illinois does not relieve its customer (Company C) of Use Tax liability. Therefore, if Company B does

not collect Illinois Use Tax from its customer, the customer would have to pay its tax liability directly to the Illinois Department of Revenue.

While active registration or resale numbers on Certificates of Resale are still preferred, Section 2c of the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/2c, provides as follows:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale."

Again, a registration or resale number from Company B on a Certificate of Resale is the preferred method for documenting that its purchase from Company A is a purchase for resale. However, in light of this statutory language, a certification from Company B on a Certificate of Resale in lieu of a resale number which described the drop-shipment situation and the fact that it (Company B) has no contact with Illinois which would require it to be registered and that it chooses not to obtain an Illinois resale number could constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by Company A in accepting such a certification and the risk run by Company B in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Company A as evidence that the particular sale was, in fact, a sale for resale.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.